

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 6802**

**BILL NUMBER:** HB 1118

**NOTE PREPARED:** Feb 22, 2008

**BILL AMENDED:** Feb 21, 2008

**SUBJECT:** Alcoholic Beverages.

**FIRST AUTHOR:** Rep. Van Haaften

**FIRST SPONSOR:** Sen. Weatherwax

**BILL STATUS:** CR Adopted - 2<sup>nd</sup> House

**FUNDS AFFECTED:** ☒ **GENERAL**  
☒ **DEDICATED**  
☐ **FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** (Amended) This bill does the following.

*Grocery Store Definition:* This bill defines "grocery store". The bill allows the Alcohol and Tobacco Commission (ATC) to renew or transfer ownership of a beer dealer's permit for a beer dealer who: (1) held a permit before July 1, 2008; and (2) has retail property that does not qualify for a permit as a grocery store.

*ATC Inspections:* This bill requires the ATC to: (1) conduct random unannounced inspections of locations where alcoholic beverages are sold or distributed; and (2) provide notice of a pending investigation at least 15 days before the investigation. (Current law requires 30 days.) The bill also allows a person at least 18 years of age and less than 21 years of age to receive or purchase alcoholic beverages as part of an enforcement action.

*Liquor and Beer Dealer Quotas:* This bill changes the quota provision for liquor dealers and beer dealers.

*Alcohol and Tobacco Sales to Minors:* The bill provides for graduated civil penalties against a permittee for repeat violations of furnishing alcohol to a minor on the licensed premises and for the collected penalties to be deposited in the enforcement and administration fund. The bill also provides that civil penalties for violations of tobacco laws concerning sales to minors and allowing minors to enter into certain tobacco retail establishments are the same as penalties for selling alcohol to minors. The bill also increases the penalty for furnishing an alcoholic beverage to a minor to: (1) a Class B misdemeanor for the first offense; (2) a Class A misdemeanor for a subsequent offense; and (3) a Class D felony if the illegal furnishing of the alcoholic beverage results in serious bodily injury to or the death of any person. This bill provides that a violation occurs if a person recklessly, knowingly, or intentionally furnishes an alcoholic beverage to a minor. (Current

law provides that a violation occurs if a person recklessly furnishes an alcoholic beverage to a minor.) The bill also makes it a Class C misdemeanor for a minor to make a false statement of the minor's age or to present or offer false or fraudulent evidence of majority or identity to an alcoholic beverage permittee for the purpose of procuring an alcoholic beverage. (Under current law, the offense is a Class C infraction.)

*Local Alcoholic Beverage Boards:* The bill requires a member of a local alcoholic beverage board (local board) to complete a training program to educate the member on alcoholic beverage law and the operation of the local board and the ATC. The bill also requires a local board member to be removed if the member does not complete the training within six months after the member is appointed. This bill provides that members appointed before January 1, 2009, have until July 1, 2009, to receive training. The bill requires a local board to allow all individuals attending a public local board meeting or hearing to make oral comments at the meeting or hearing regarding the subject of the meeting or hearing. The bill also allows a local board to give greater weight to oral comments provided by a person who owns or operates a business, owns real property, or resides within 1,000 feet of the requested location of an alcoholic beverage permit. The bill requires the ATC to give notice: (1) by mail to the local board if an objection has been filed and of the date of any appeal hearing set by the ATC; and (2) by publication of the date of any appeal hearing set by the ATC. The bill also allows a small brewery to sell and deliver beer to a consumer.

*Alcoholic Beverage at Certain Events:* This bill removes the limits on the number of guests and duration of an event where an excursion and adjacent landsite permit holder provides alcoholic beverages to guests without charge. The bill allows an outdoor place of public entertainment used primarily in connection with live music concerts to allow a person to enter its establishment with alcoholic beverages and consume the alcoholic beverages on the premises.

*Brewer and Wholesaler Sales to Consumers:* This bill removes a provision that allows a large brewery to sell and deliver beer to a consumer. The bill prohibits a beer wholesaler from selling beer to a consumer other than an employee. The bill also allows liquor retailers and liquor dealers to provide six ounce samples of flavored malt beverages and hard cider. This bill allows a liquor wholesaler to sell liquor in an amount not to exceed 18 liters to an employee of the liquor wholesaler.

*Estate Sale Purchases:* The bill establishes requirements for a wine wholesaler to resell wine purchased at an estate sale. The bill provides a wholesaler with immunity from product liability for wine that was purchased at an estate sale.

*Coercion of Permittees:* The bill also prohibits a permittee from knowingly or intentionally coercing another permittee to enter into an agreement or take an action that violates the alcoholic beverage statutes and rules. (Current law prohibits only a primary source of supply or a beer wholesaler from coercing a beer wholesaler.)

*Warehouse Transfers:* The bill provides that if a beer wholesaler's warehouse is transferred, the warehouse does not have to be transferred to a location within an incorporated area.

*Small Brewery Tourist Signage:* The bill also requires criteria, established jointly by the Indiana Department of Transportation and the Office of Tourism Development, for tourist attraction signage to include a category for a tourist attraction that is a small brewery.

*Sales Clerks:* This bill requires alcoholic beverage sales in a drug store or grocery store to be rung up by a sales clerk who is at least 19 years of age.

*New Year's Day Sales Allowed:* The bill allows the sale of alcoholic beverages on New Year's day for off-premises consumption.

*ATC Administration Changes:* The bill also provides that the ATC has certain powers regarding enforcement of the tobacco laws. This bill removes a provision that enforcement officers of the ATC must be employed so that not more than ½ are members of the same political party.

*ATC Trainer and Alcohol Server Training Programs:* The bill allows the ATC to approve trainer programs (to educate individuals on training alcohol servers) by third parties that meet certain requirements. The bill also extends the implementation of the alcohol server training requirements to January 2010. This bill makes conforming changes.

*Employee Permits:* This bill changes: (1) the term of an employee's permit from two to three years; and (2) the fee to correspond with the term change.

*Warning Pregnant Women of Tobacco Use:* The bill requires tobacco vending machines and establishments that sell tobacco to post a notice that: (1) states that smoking by pregnant women may result in fetal injury, premature birth, and low birth weight; and (2) provides a phone number for assistance to quit smoking.

*Alcoholic Beverage Issues Study Committee:* The bill establishes a two-year study committee to study certain alcoholic beverage issues.

**Effective Date:** (Amended) Upon passage; July 1, 2008.

**Explanation of State Expenditures:** (Revised) This bill will increase administrative costs for the Alcohol and Tobacco Commission. The ATC will have to amend rules, forms, permit, and enforcement procedures to implement the provisions of this bill. The amount of increase in administrative costs is indeterminable.

The funds and resources required for the ATC could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions. The ATC reverted \$145,032 in FY 2007, and according to the February 18, 2008, *State Vacant Positions Report*, the ATC had three vacant positions worth approximately \$107,000.

**Background and Details:**

(Revised) *Liquor and Beer Dealer Quotas:* The bill changes the quota provision for liquor dealers and beer dealers. To the extent that liquor and beer dealer permit applications may increase there could be an increase in administrative costs to the ATC. It is estimated that any increase due to these changes will be offset by the increase in permit fee revenue realized by granting more liquor and beer dealer permits.

The bill also allows, in addition to the permit quotas, the ATC to issue the greater of two new dealer permits or 5% of the total dealer permits allowed, to each city, town, or unincorporated area that is already at or exceeds the new quota restrictions.

The bill also provides that in granting the new permits beyond the quota restrictions the ATC must consider the following factors:

- (1) The need for the services at the requested location of the permit.
- (2) The desire of the neighborhood or the community to receive the services.
- (3) The impact of the services on other business in the neighborhood or community.
- (4) The impact of the services on the neighborhood or community.

(Revised) *Local Alcoholic Beverage Boards*: The bill requires local alcoholic beverage board members to complete a training program conducted by the ATC. The increase in costs to the ATC for training approximately 368 local board members (four per county) is indeterminable and will ultimately depend upon the administrative decisions of the ATC in implementing the program.

*ATC Trainer and Alcohol Server Training Programs*: The bill allows the ATC to implement alcohol server trainer training programs. To the extent that the ATC is able to train more individuals that can train alcohol servers, there could be an offsetting administrative cost savings. Any savings will ultimately depend upon the number of individuals that receive the trainer certification and the administrative decisions of the ATC in contracting with these individuals to provide server training.

*Live Music Concerts and Entrance with Alcohol*: This bill would allow people to bring alcoholic beverages into, and consume those beverages at, Conner Prairie's Symphony on the Prairie series at the location commonly referred to as the "symphony bowl." Under current law, it is unlawful for a person who owns or operates a restaurant or place of public entertainment to allow people to enter the establishment with alcoholic beverages for consumption in the establishment. The statute (IC 7.1-5-8-4) states that this prohibition does not apply to the following:

- (1) A private room hired by a guest of a bona fide club or hotel that holds a retail permit.
- (2) A facility that is used in connection with the operation of a paved track that is used primarily for the sport of auto racing.

This bill adds the following type of establishment to this list:

- (3) An outdoor place of public entertainment that is:
  - (A) between 4 and 6 acres;
  - (B) within a mile of the White River;
  - (C) owned and operated by a 501(c)(3) nonprofit corporation; and
  - (D) used primarily in connection with live music concerts.

The only place currently known to fit this description is the symphony bowl at Conner Prairie.

*Alcohol & Tobacco Sales to Minors*: Under current law, a person recklessly selling, bartering, exchanging, providing, or furnishing an alcoholic beverage to a minor commits a Class C misdemeanor. Under the bill, the offense would become a Class B misdemeanor, and knowingly or intentionally would be added to the condition of the offense. In addition two new criminal penalties would be added under this section: a Class A misdemeanor for a subsequent offense; and a Class D felony if the offense results in serious bodily injury or death.

State expenditures could increase if an offender is incarcerated in a state prison rather than in a local jail. A Class D felony is punishable by a prison term ranging between six months to three years or reduction to Class A misdemeanor. The period of incarceration will depend upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$19,185 and \$63,138 for a juvenile in FY 2007.

(This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

(Revised) *Tobacco Certificate Enforcement*: This bill sets forth many new requirements, procedures, and enforcement powers for the ATC to regulate tobacco certificates within the state. These provisions will cause an indeterminable increase in administrative costs to the ATC. These increases could be offset by the sections in the bill that provide if a tobacco certificate is revoked, the application fee for renewing or reinstating that certificate is \$1,000. The bill gives the ATC discretion in reinstating these certificates, and the ATC may not reinstate or renew a certificate for at least 180 days after the revocation date. The application fee provision will increase tobacco certificate fee revenue to the extent that revoked certificates are reinstated. The fiscal impact will ultimately depend upon the administrative decisions of the ATC in allowing a revoked certificate to be reinstated. Tobacco certificate fees are distributed to the ATC Enforcement and Administration Fund.

(Revised) *Alcoholic Beverage Issues Study Committee*: The bill creates the Interim Study Committee on Alcoholic Beverage Issues, which is to operate under the policies of the Legislative Council regarding study committees. The size and composition of the Committee are not specified in the bill. Legislative Council resolutions in the past have established budgets for interim study committees in the amount of \$9,500 per interim for committees with fewer than 16 members and \$16,500 per interim for committees with 16 members or more.

The Legislative Council provides for per diem, mileage, and travel expense reimbursement for members of interim study committees. Interim study committees are staffed by the Legislative Services Agency. The funds necessary to carry out the bill are paid from state General Fund appropriations to the Legislative Council and Legislative Services Agency.

The bill requires the Committee to study and make recommendations to the Legislative Council concerning the following:

- (1) Alcohol server training and employee permits for sales clerks in dealer establishments.
- (2) Additional one-, two-, or three-way permits for restaurants in economic development areas.
- (3) Displaying alcoholic beverages in separate areas in dealer establishments.
- (4) The historic origins of Indiana alcoholic beverage laws and the Twenty-first Amendment to the Constitution of the United States and its place and purpose in the twenty-first century.

**Explanation of State Revenues:** (Revised) *Liquor and Beer Dealer Quotas*: The bill sets new quota restrictions for issuance of beer and liquor dealer permits. To the extent that the number of permits issued by the ATC is changed by these provisions, there could be an impact on permit fee revenue.

The bill provides that the ATC may grant liquor or beer dealer permits as follows:

- (1) 1 dealer permit for every 2,250 people in a city or town with under 15,000 people;
- (2) 1 dealer permit for every 3,500 people in a city or town with between 15,000 and 80,000 people, or 7 beer dealer permits, whichever is greater; and
- (3) 1 dealer permit for every 6,000 people in a city or town with over 80,000 people, or 23 beer dealer permits, whichever is greater.

Unincorporated areas are limited to 1 dealer permit for every 2,500 people. The bill also gives the ATC the

authority to renew or transfer liquor or beer dealer permits issued before July 1, 2008, outside the new quota restrictions. The bill then allows, in addition to the permit quotas, the ATC to issue the greater of 2 new dealer permits or 5% of the total dealer permits allowed, to each city, town, or unincorporated area that is already at or exceeds the new quota restrictions.

The bill also provides that in granting the new permits beyond the quota restrictions the ATC must consider the following factors:

- (1) The need for the services at the requested location of the permit.
- (2) The desire of the neighborhood or the community to receive the services.
- (3) The impact of the services on other business in the neighborhood or community.
- (4) The impact of the services on the neighborhood or community.

Revenue from these permits is distributed 37% to the state General Fund; 33% to the general funds of cities, towns, and counties based on population; and 30% to the Enforcement and Administration Fund. The fee for these permits is \$500.

(Revised) *Definition of Grocery Store:* Under the bill "grocery store" is defined as a store or part of a store that is known generally as:

- (1) a supermarket, grocery store, or delicatessen and is primarily engaged in the retail sale of a general food line, which may include:
  - (A) canned and frozen foods;
  - (B) fresh fruits and vegetables; and
  - (C) fresh and prepared meats, fish, and poultry;
- (2) a convenience store or food mart and is primarily engaged in:
  - (A) the retail sale of a line of goods that may include milk, bread, soda, and snacks; or
  - (B) the retail sale of automotive fuels and the retail sale of a line of goods that may include milk, bread, soda, and snacks;so long as the convenience store's sale of alcohol represents less than 25% of the store's annual gross sales excluding fuel;
- (3) a warehouse club, superstore, supercenter, or general merchandise store and is primarily engaged in the retail sale of a general line of groceries or gourmet foods in combination with general lines of new merchandise, which may include apparel, furniture, and appliances; or
- (4) a specialty or gourmet food store primarily engaged in the retail sale of miscellaneous specialty foods not for immediate consumption and not made on the premises, not including:
  - (A) meat, fish, and seafood;
  - (B) fruits and vegetables;
  - (C) confections, nuts, and popcorn; and
  - (D) baked goods.

The bill also provides that gas stations that primarily sell fuel and/or car parts are excluded. This definition's impact on dealer permit fee revenue is indeterminable. The impact on fee revenue will ultimately depend on the administrative actions of the ATC, and the number of permits issued to dealers that previously may not have qualified as a grocery store. According to the ATC there are approximately 1,330 grocery store beer dealer permits issued under IC 7.1-3-5-2. The bill gives the ATC the option of renewing or transferring ownership of a beer dealer's permit for a grocery store held by a permittee who falls outside this new definition of grocery store in the bill and is a proprietor of a drug store, grocery store, or a package liquor store. Therefore, the total number of permits issued may not decrease.

(Revised) *Alcohol & Tobacco Sales to Minors*:: The bill establishes civil penalties for an alcohol permit holder, the holder's agent, or the holder's employee that furnishes alcohol to a minor. Any civil penalties collected would increase revenue to the Enforcement and Administration Fund. The bill provides that any fines collected under this provision shall be deposited in the EAF.

The bill also provides that civil penalties for violations of tobacco laws concerning sales to minors are the same as penalties for selling alcohol to minors. This increase in civil penalties will result in an increase in revenue to the Richard D. Doyle Youth Tobacco Education and Enforcement Fund. The amount of any increase is indeterminable.

The bill changes the existing penalty for alcohol sales to minors from a Class C to a Class B misdemeanor. This bill also adds penalties for repeat offenses of sales of alcohol to minors. This could cause more revenue to the Common School Fund to be collected if a larger criminal fine is assessed by the sentencing court. The maximum fine for a Class C misdemeanor is \$500, while the maximum fine for a Class B misdemeanor is \$1,000, for a Class A misdemeanor is \$5,000, and a Class D felony is \$10,000.

The bill also changes the penalty for a minor who makes a false statement concerning the minor's age or presents false identification for the purpose of procuring alcoholic beverages. The bill makes the penalty a Class C misdemeanor rather than a Class C infraction as under current law. The bill also adds a knowingly or intentional standard to this statute. These changes could potentially increase revenue to the Common School Fund, but could reduce revenue that is deposited in the state General Fund. However, any change in revenue is likely to be small. Currently, the maximum judgment for a Class C infraction is \$500, which is deposited into the state General Fund, while the maximum fine for a Class C misdemeanor is \$500, which is deposited into the Common School Fund. The state General Fund may receive additional court fee revenue. However, the amount is likely to be small.

Court fees for both misdemeanors and felonies are \$120.

(Revised) *Employee Permits*: The bill changes: (1) the term of an employee's permit from two to three years; and (2) the fee to correspond with the term change. The fee in the bill goes from \$30 to \$45. The cost per year for this permit does not change. Therefore, the only fiscal impact will be a shift of revenue due to the change to the term of these permits. This shift would not begin until FY 2011 for permits that are issued or renewed in FY 2009 after the July 1, 2008, effective date for this provision. Those permits issued or renewed in FY 2009 would expire in FY 2011 under current law, but would not expire until FY 2012 under the bill.

(Revised) *Tobacco Certificate Enforcement*: This bill sets forth many new requirements, procedures, and enforcement powers for the ATC to regulate tobacco certificates within the state. These provisions will cause an indeterminable increase in administrative costs to the ATC. These increases could be offset by the sections in the bill that provide if a tobacco certificate is revoked, the application fee for renewing or reinstating that certificate is \$1,000. The bill gives the ATC discretion in reinstating these certificates, and the ATC may not reinstate or renew a certificate for at least 180 days after the revocation date. The application fee provision will increase tobacco certificate fee revenue to the extent that revoked certificates are reinstated. The fiscal impact will ultimately depend upon the administrative decisions of the ATC in allowing a revoked certificate to be reinstated. Tobacco certificate fees are distributed to the ATC Enforcement and Administration Fund.

(Revised) *Warning Pregnant Women of Tobacco Use*: The bill adds the notice requirement to a current statutory provision requiring notice of the prohibition against the sales of tobacco to persons under 18 years of age. A person who fails to post the current notice requirement, or the new notice requirement provided in this bill, commits a Class C infraction. The maximum judgment for a Class C infraction is \$500, which would be deposited in the state General Fund. The amount of additional revenue is indeterminable and will ultimately depend upon the number of tobacco retailers who fail to post the required notices.

*Background on Alcohol Sales*: To the extent that any of the provisions of this bill affect alcoholic beverage sales, state revenues will be impacted. Sales changes will affect collections of both alcoholic beverage excise taxes and the Sales Tax.

The alcoholic beverage excise taxes are distributed in varying amounts to the following funds: state General Fund, the Post War Construction Fund , the ATC Enforcement and Administration Fund , the Addiction Services Fund , and the Wine Grape Market Development Fund. The state retains 50% of the General Fund distribution of beer and wine excise tax revenue. The remainder is distributed to cities and towns based on population.

Sales Tax revenue is deposited in the Property Tax Replacement Fund (50%), the state General Fund (49.067%), the Public Mass Transportation Fund (0.76%), the Commuter Rail Service Fund (0.14%), and the Industrial Rail Service Fund (0.033%).

**Explanation of Local Expenditures**: (Revised) *Alcohol Sales to Minors*: The bill changes the existing penalty for alcohol sales to minors from a Class C to a Class B misdemeanor. This bill also adds penalties for repeat offenses of sales of alcohol to minors, and changes the penalty for a minor that knowingly or intentionally uses false identification for the purpose of procuring alcoholic beverages. Costs to local governments could increase because the maximum term of imprisonment for a Class C misdemeanor is up to 60 days in jail, while the maximum term for a Class B misdemeanor is up to 180 days, and the maximum term for a Class A misdemeanor is up to one year. The average daily cost of housing a prisoner is approximately \$44. However, if an offender is sentenced to state prison rather than to a county jail, the costs to the county may be reduced.

**Explanation of Local Revenues**: Any increase in alcoholic beverage excise taxes, dealer permit fee revenue, or retailer permit fee revenue would increase revenue distributed to local governments as required by the distribution formulas for these revenue sources.

*Liquor and Beer Dealer Quotas*: For an explanation of the impact on permit fee revenues that will be distributed to cities and towns please refer to the *Explanation of State Revenues* section above.

*Alcohol Sales to Minors*: Court fees would remain unchanged. Court fees are \$120 for both misdemeanor and felony offenses.

(Revised) *Warning Pregnant Women of Tobacco Use*: If additional court actions are filed and a judgment is entered, local governments would receive revenue from court fees. The amount of additional revenue is indeterminable and will ultimately depend upon the number of tobacco retailers who fail to post the required notices.

**State Agencies Affected**: Alcohol and Tobacco Commission.



**Local Agencies Affected:** Trial courts; local law enforcement agencies; local alcoholic beverage boards.

**Information Sources:** Vicki Stephens, Controller, ATC, 317-232-2436; Indiana Sheriffs' Association; Indiana Association of Cities and towns.

**Fiscal Analyst:** Adam Brown, 317-232-9854.